



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,578	10/02/2003	David L. Churchill	115-007	9298
26542	7590	01/19/2006	EXAMINER	
JAMES MARC LEAS 37 BUTLER DRIVE S. BURLINGTON, VT 05403				WHITTINGTON, KENNETH
		ART UNIT		PAPER NUMBER
		2862		

DATE MAILED: 01/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/677,578	CHURCHILL ET AL.
Examiner	Art Unit	
Kenneth J. Whittington	2862	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 December 2005.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-31 and 33-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1-31, 33, 34 and 36 is/are allowed.
- 6) Claim(s) 35 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

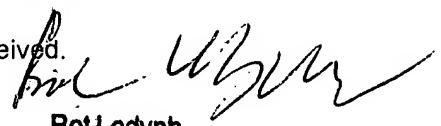
#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 12 October 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.



Bot Ledynh  
Primary Examiner

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

**DETAILED ACTION**

The Amendment filed December 19, 2005 has been entered and considered. In view thereof, the rejections of the claims as being obvious over Davis (US 4,347,492) and combinations involving Davis are withdrawn.

6

***Allowable Subject Matter***

Claims 1-31, 33, 34 and 36 are allowed.

The following is an examiner's statement of reasons for allowance:

Regarding claims 1-27 and 36, they are allowable in view of 12 the amendments made to the claim 1.

Regarding the remaining claims, they are allowed for those reasons contained in the Office Action mailed October 5, 2005.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue 18 fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuboi (US 6,573,686) in view of ordinary skill in the art. Tsuboi teaches an array of displacement sensors providing displacement measurements (See FIG. 10). However, while Tsuboi does teach the sensors being electric 6 micrometers, it does not explicitly teach any specific spacing between sensors. Nonetheless, modifying Tsuboi to have the relative dimensions as recited in the claims would be obvious to one having ordinary skill in the art through routine experimentation because where the only difference between the prior art and the claims was a recitation of 12 relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device is not patentably distinct from the prior art device. *See Gardner v. TEC Systems, Inc.*, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 225 USPQ 232 (1984).

18

***Response to Arguments***

Applicant's arguments filed December 19, 2005 have been fully considered and they are persuasive in part. Accordingly, claims 1-31, 33, 34 and 36 are now indicated as allowed.

Art Unit: 2862

However, with regard to claim 35, the arguments are not persuasive and the rejection stands.

Regarding claim 35, Applicant asserts that Tsuboi does not provide an enabling disclosure to teach the claims. However, the test of obviousness is what the teachings of the references 6 would have suggested to those of ordinary skill in the art (See *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981)), it is not whether each reference enables its modification or the combination.

Tsuboi teaches of an array of electric micrometers, but does explicitly not provide any information on the precise 12 spacings between them. The *Gardner* case above teaches it is merely routine skill in the art to make an apparatus to certain dimensions. It would thus be obvious routine skill in the art to simply make the device of Tsuboi to the dimensions cited in the claim in order to make the apparatus more compact.

In order to overcome the rejection, the claims must recite 18 some features, other than the dimensions themselves, that distinguish the claims from the prior art device, or the Applicant must show that the prior art device with the recited dimensions would perform differently than the claimed device. Because Applicant has not identified any claim features or

Art Unit: 2862

provided any evidence of differing performance, the rejection stands.

*Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the 6 extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened 12 statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

18 Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth J. Whittington whose telephone number is (571) 272-2264. The examiner can normally be reached on Monday-Friday, 7:30am-4:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be

Art Unit: 2862

reached on (571) 272-2180. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).



Kenneth J. Whittington  
Examiner  
Art Unit 2862

kjw